

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

RECEIVED

United States District Court		District <u>Middle Dist. of Alabama</u>
Name (under which you were convicted): <u>JOSEPH E. WALKER</u>		Docket or Case No.: <u>3:07cv62-WHA</u>
Place of Confinement: <u>HOLMAN PRISON</u>		Prisoner No.: <u>189482</u>
Petitioner (include the name under which you were convicted) <u>JOSEPH E. WALKER</u>		Respondent (authorized person having custody of petitioner) <u>GRANT CULLIVER, WARDEN;</u>
The Attorney General of the State of <u>ALABAMA</u>		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: CIRCUIT COURT OF RUSSELL COUNTY, PHENIX CITY, ALABAMA
- (b) Criminal docket or case number (if you know): CC-95-0598
- (a) Date of the judgment of conviction (if you know): SEPTEMBER 16, 1996
- (b) Date of sentencing: _____
- Length of sentence: LIFE WITHOUT PAROLE
- In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
- Identify all crimes of which you were convicted and sentenced in this case: ROBBERY, 1ST
- (a) What was your plea? (Check one)

(1) Not guilty <input type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input checked="" type="checkbox"/>

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: ALA COURT OF CRIMINAL APPEALS

(b) Docket or case number (if you know): N/A

(c) Result: AFFIRMED, NO OPINION

(d) Date of result (if you know): JULY 3, 1997

(e) Citation to the case (if you know): N/A

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: ALABAMA SUPREME COURT

(2) Docket or case number (if you know): N/A

(3) Result: CERT. DENIED

(4) Date of result (if you know): N/A

(5) Citation to the case (if you know): N/A

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: CIRCUIT COURT OF RUSSELL COUNTY, ALA.

(2) Docket or case number (if you know): CC-95-0598.60

(3) Date of filing (if you know): APRIL 18, 2005

(4) Nature of the proceeding: RULE 32

(5) Grounds raised: PETITIONER CONVICTED AND SENTENCED WHILE MENTALLY INCOMPETENT TO STAND TRIAL.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: DENIED

(8) Date of result (if you know): DECEMBER 6, 2005

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: _____

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: SEE ATTACHED.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: RULE 32

Name and location of the court where the motion or petition was filed: Circuit Court of Russell County, Ala.

Docket or case number (if you know): CC-95-0598.63

Date of the court's decision: DECEMBER 6, 2005

Result (attach a copy of the court's opinion or order, if available):

DENIED

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: ALA. COURT OF CRIM. APP.

Docket or case number (if you know): CR-05-490

Date of the court's decision: JULY 14, 2006

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: JOEL COLLINS

(c) At trial: JOEL COLLINS

(d) At sentencing: JOEL COLLINS

(e) On appeal: PATRICK ONEIL MILLER

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

1. The first part of the document is a title page. It contains the title "The History of the United States" and the author "John Adams".

2. The second part of the document is a preface. It discusses the importance of history and the role of the historian.

3. The third part of the document is the main body of the text. It is divided into several chapters, each covering a different period of American history.

4. The fourth part of the document is a conclusion. It summarizes the main points of the text and offers some final thoughts on the history of the United States.

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: EVIDENTIARY HEARINGS,
APPOINTMENT OF COUNSEL, OVERTURN CONVICTION.

or any other relief to which petitioner may be entitled.

Pro-Se.
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on Jan. 17, 2007
(month, date, year):

Executed (signed) on Jan. 17, 2007 (date).

Joseph E. Walker
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing
this petition. _____

* * * * *

CLAIM FOR RELIEF

Petitioner was convicted in the circuit court of Russell County, Alabama on a charge of robbery, 1st while he was mentally incompetent to stand trial, in violation of the Fifth and Fourteenth amendments to the U.S. Constitution and the laws of the United States of America.

FACTS IN SUPPORT OF CLAIMS FOR RELIEF

Petitioner was indicted by a Grand Jury in Russell County, Alabama on a charge of robbery. Mr. Joel Collins, court-appointed counsel was assigned to represent him. Upon consultation with Petitioner counsel filed a motion requesting that Petitioner be examined by a mental health expert. Counsel informed Judge Wayne T. Johnson, Circuit Court Judge for Russell County, that it appeared that Petitioner was not mentally competent to stand trial.

Upon receipt of the motion Judge Johnson evaluated Petitioner and found there existed a bona fide doubt as to whether Petitioner was competent to stand trial. He then issued an order dated January 5, 1996 directing that Petitioner be examined by mental health professionals and that a report be made and submitted to the court following the evaluation.

Despite the order Petitioner was not seen by anyone. No psychiatric evaluation ever took place. Notwithstanding, Petitioner was obliged to proceed with the trial, convicted and sentenced to life without the possibility of parole on September 16, 1996.

ARGUMENT

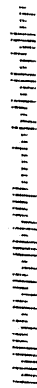
Petitioner respectfully submits that his conviction and sentence occurred while he was legally incompetent to stand trial, in violation of his substantive due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. Pate v. robinson 383 U.S. 375 (1965); Ake v. Oklahoma, 470 U.S. 68 (1985).

Petitioner has a lengthy history of psychiatric problems, dating back to the earliest years of his childhood. He was principally termed bipolar and schizophrenic by doctors at Southwest Mental Health Center and has been under care for many years. There is ample evidence available demonstrating Petitioner's mental deficiency and the State of Alabama had access to this information prior to trial in this case. Even while incarcerated Petitioner continues to be treated for his condition. Aside from his obvious mental insanity Petitioner's I.Q. is well below the threshold for mental competency.

Based on objective factors a trial judge would find little difficulty in reaching a conclusion that Petitioner was legally incompetent at the time of his trial and that he was tried and convicted while legally incompetent.

Wherefore, Petitioner respectfully requests this Honorable Court appoint counsel and set this matter for an evidentiary hearing as soon assigned practicability allows.

E. W. Her 189482
IN. 7 3700-5-97
Alabama
36503-5700



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